

Special Civil Application No 2364 of 1988

Date of decision: 19/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed No to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MANHARLAL CHUNILAL

vs

COMPETENT AUTHORITY & DY.COLLECTOR, RAJKOT & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shrhi D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 23rd November 1983 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 7th September 1987 in Appeal No. Rajkot-18 of 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 4561.91 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. That was duly processed by respondent No.1. After observing necessary formalities under sec. 8 thereof, by his order passed on 23rd November 1983 under sec. 8(4) thereof, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 4561.91 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-18 of 1984. By the order passed on 7th September 1987 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. As rightly submitted by learned Advocate Shri Nanavaty for the petitioner, the constructed house property in existence prior to coming into force of the Act has to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567.

4. Learned Advocate Shri Nanavaty for the petitioner is also right in his submission that members of a joint Hindu family are not an association of persons in view of the binding Division Bench ruling of this Court in the case of Chhaganlal Trikamdas Thakker & Others v. Competent Authority, Rajkot and Others reported in 1994(1) Gujarat Current Decisions at page 1. The authorities below were in error in treating them as an association of persons.

5. It is not in dispute that the petitioner filed his declaration in his capacity as the karta of the joint Hindu family. Members of such joint Hindu family cannot be treated as an association of persons in view of the aforesaid binding Division Bench ruling. The authorities below were not right in taking the contrary view.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It needs no telling that each adult member of the family would

be entitled to a separate ceiling unit. The area of the house property will have to be excluded from the holding of the petitioner.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 23rd November 1983 at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 7th September 1987 in Appeal No. Rajkot-18 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
